

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 17, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Richard C. Chism, Director
Office of Air

Docket No.: 2022-1368-MIS

Subject: Commission Approval for Proposed Non-Rulemaking
2023 Amendment to the Air Quality Standard Permit for Concrete Batch Plants
Rule Project No. 2022-033-OTH-NR

Background and reason(s) for the proposed amendments to the standard permit:

The Texas Commission on Environmental Quality (TCEQ or commission) is seeking to amend the non-rule air quality standard permit authorizing concrete batch plants (CBPs) under the authority of the Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05195, and 30 Texas Administrative Code (TAC) Chapter 116, Subchapter F, Standard Permits. Under 30 TAC §116.605, Standard Permit Amendment and Revocation, the commission will consider the following when determining whether to amend a standard permit: whether a condition of air pollution exists; the applicability of other state or federal standards that apply or will apply to the types of facilities covered by the standard permit; requests from the regulated community or the public to amend a standard permit consistent with the requirements of the TCAA; and whether the standard permit requires best available control technology.

The proposed amendments to the standard permit would incorporate the results of an updated Air Quality Analysis (AQA) that was conducted to address public concern about potential health impacts of concrete batch plants registered under the standard permit. The AQA is a report containing information that demonstrates that emissions at a concrete batch plant authorized by this standard permit would not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS), exceed a state property line standard, or adversely affect human health and the environment. As a result of the updated AQA, the TCEQ is proposing revisions to this standard permit. The proposed amendments include revised operational requirements, additional setback limitations, production limitations, and updated best management practices.

Scope of the proposed amendments:

A.) Summary of what the proposed permit amendments would do:

The TCEQ is seeking to amend the air quality standard permit for CBPs. The proposed amendments would revise the standard permit's operational requirements, setback requirements, concrete production rate limitations, nuisance dust control provisions, and best management practices. The specific changes to setback requirements and production rate limitations vary depending on the geographic location of the CBP and the type of capture technology used for the loading operation. The amended standard permit would ensure protectiveness at the property line and reduce the nuisance potential of CBPs authorized by the standard permit.

B.) Scope required by federal regulations or state statutes:

The amendments to this standard permit are authorized by the TCAA, THSC, Chapter 382 and are based on a comprehensive evaluation of air emissions and applicable air quality standards and screening levels. The proposed changes are not specifically required by federal or state statutes, but pursuant to 30 TAC §116.605(d)(3), the commission is required to consider certain factors when amending or revoking a standard permit.

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C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

The amendments to the standard permit would be proposed under Texas Health and Safety Code, Texas Clean Air Act:

- §382.011, General Powers and Duties;
- §382.023, Orders;
- §382.051, Permitting Authority of the Commission; Rules;
- §382.0513, Permit Conditions; and
- §382.05195, Standard Permit.

Effect on the:

A.) Regulated community:

If the proposed amended air quality standard permit for CBPs is adopted by the commission, the regulated community would be required to comply with the amended requirements. Some regulated entities may incur costs associated with those requirements or be required to acquire authorization through another permitting mechanism. CBP facilities previously registered under earlier versions of the standard permit would comply with the requirements of 30 TAC §116.605 relating to compliance with an amended standard permit.

B.) Public:

Updating the standard permit may benefit the public by ensuring that the standard permit is evaluated against current guidelines and that estimated emissions from CBPs operating under the standard permit are protective of human health and the environment.

C.) Agency programs:

No significant fiscal implications are anticipated for the agency or the state.

The amendment would require revisions to internal policies and procedures to align with the amended air quality standard permit for CBPs. Existing guidance, workbooks, and applicable checklists available to the regulated community would also be updated.

Stakeholder meetings:

In November 2022, the TCEQ held three public stakeholder meetings for this standard permit. A hybrid in-person and virtual meeting was held in Austin, and in-person meetings were held in Dallas and Houston. Notice of the stakeholder meetings was posted on the TCEQ's publicly accessible webpage and provided through the GovDelivery email/text service.

The proposed amendments will also undergo an extended public comment period, and a public meeting and informational meeting will be held. Notice of the draft standard permit will be published in the *Texas Register*, the commission's publicly accessible electronic media, and in the newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, San Antonio, and Houston.

Public Involvement Plan:

In addition to the statutory public notice requirements, TCEQ will develop a public involvement plan to encourage public participation. A plain language summary will be provided. Additionally, TCEQ has held three public stakeholder meetings to collect community feedback and comments on the standard permit. These meetings provided an opportunity for the public to learn more about the proposed amendment. An informational meeting will also be held in Houston during the formal comment period.

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Alternative Language Requirements:

Notice of the proposed amendments to the standard permit will be published in both English and Spanish in the Austin, Dallas, San Antonio, and Houston areas. Interpreters were available at the November 2022 stakeholder meetings. Interpreters will be available at the public meeting scheduled for May 18, 2023, and will also be available at the informational meeting. A plain language summary will be provided in Spanish and if a need is identified, other documents may be translated into alternative languages.

Potential controversial concerns and legislative interest:

There has been significant interest in the air quality standard permit for CBPs from elected officials, local governments, industry, advocacy groups, and citizens of the state.

Would this non-rulemaking action affect any current policies or require development of new policies?

The amendment would require minor revisions to internal policies, guidance, and procedures to align with the amended Standard Permit.

What are the consequences if this proposed standard permit revision does not go forward? Are there alternatives to non-rulemaking?

The commission could choose not to amend the air quality standard permit for CBPs and continue to use the existing standard permit.

Key points in the proposed standard permit schedule:

Anticipated *Texas Register* publication date: April 14, 2023

Anticipated public meeting date: May 18, 2023

Anticipated public comment period: April 14, 2023 through June 14, 2023

Anticipated adoption date: January 10, 2024

Agency contacts:

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Attachments:

None.

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